IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8816 of 2005

M/s.Dada Fire Works Pvt. Ltd. & anr. Petitioners
Vs.
The State of Maharashtra & ors. Respondents

Mr.C.M.Korde, Sr. Counsel with Mr.Madhav Jamdar for petitioners.
Mr.P.P.Kakade, AGP for Resp.nos.1 to 3, 5 & 6.
Mr.R.G.Ketkar for Resp.no.4.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

Reserved on : December 08, 2006.
Pronounced on : December 13, 2006.

ORAL ORDER (PER B.H.MARLAPALLE,J.)

1. The petitioners have prayed for an appropriate writ / direction for a declaration that the land acquisition proceedings initiated to acquire the land bearing Survey Nos.191, 192, 193, 194 and 195/2 situated at village Fursungi, Taluka Haveli, Dist. Pune are illegal and to quash and set aside the same.

2. The petitioner no.1 is a company registered under the Companies Act, 1956 with its registered office at No.14, Jaiprakash Narayan Garden, Pune 411 001 and petitioner no.2 is the Director of the petitioner no.1 - company. Admittedly for the very same relief they had approached this Court in Writ Petition No. 5604 of 2002 which was dismissed by a

Division Bench on 22nd/23rd March 2005 along with other petitions viz. Writ Petition Nos.6973, 7302, 7389 and 7415 of 2002. The said order was challenged before the Supreme Court but in vain.

3. This petition has been filed in the fresh round but challenging the acquisition on a totally new ground viz. the Land Acquisition Officer who issued the notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act for short) and conducted an enquiry under Section 5A of the said Act was not duly appointed and, therefore, the proceedings initiated were without any authority in law. In support of these contentions the learned Senior Counsel for the petitioners placed reliance on the definition in Section 3(eee) of the Act which reads as under:

> "Land Acquisition Officer" means an officer appointed as such by the State Government by Notification in the Official Gazette for such provisions of this Act as may be specified in the notification."

It is contended that Shri M.C. Kaple who issued the

notification under Section 4 and conducted an enquiry under Section 5A of the Act, was not duly appointed under Section 3(eee) of the said Act.

4. There is no dispute that the subject land was acquired for construction of a garbage depot by the respondent - Municipal Corporation and by invoking the urgency clause under Section 17 of the Act the possession of the land was taken over on 2/4/2005 and it is contended that the petitioners became aware of the said acquisition for the first time on 9/10/2006. The notification under Section 4 was issued under the signature of Shri Kaple on 25/7/2002 who retired in July 2004 while holding the post of Special Land Acquisition Officer No.15, Pune and he held the said post from 9/7/1999 to 31/7/2004. After his retirement his charge was given to the Special Land Acquisition Officer, No.16, Pune from 31/7/2004 to 5/8/2004 and thereafter Shri D.D.Kale came to be appointed as Special Land Acquisition Officer No.15 on 5/8/2004. These details have been set out by the Divisional Commissioner in his affidavit placed before us. As per the said affidavit Shri D.D. Kale was serving as the Special Land Acquisition Officer No.14, Pune before he was appointed as the Special

Land Acquisition Officer No.15, Pune and he served in the said post till 30/6/2006. For the period from 1/7/2006 to 16/9/2006 the Special Land Acquisition Officer No.16 was given additional charge of Special Land Acquisition Officer No.15, Pune and thereafter Mr.P.R.Thakur, who was earlier serving as Town Planner in Town Planning Department at Aurangabad came to be appointed as Special Land Acquisition Officer No.15, Pune.

5. It was submitted by the learned senior counsel for the petitioners that all these appointments were not gazetted and, therefore, they cannot be the appointees under Section 3(eee) of the Act. We have noted that by an amendment inserted in the year 1972 clause (eee) came to be added below Section 3. We must also note that Section 3(c) of the Act has been amended by the State Government and it reads as under:

> "the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer or person specially appointed by the appropriate Government or by the Commissioner to perform

the function of a Collector under this Act."

6. We have noted that on the amendments inserted by Maharashtra 39 of 1972, the State Government issued a notification dated 9/11/1972. The amendments incorporated by Maharashtra 39 of 1972 were brought into force on 10th November 1972, and this notification by the State Government was issued so as to empower the Land Acquisition Officers / Special Land Acquisition Officers to issue notifications under Section 4 of the Act with a view to expediting the acquisition proceedings particularly in respect of irrigation projects, road schemes, gaothan extensions, the scheme for provision of house sites to the landless etc. In exercise of the powers conferred by clause (eee) of Section 3 of the Act the State Government appointed the officers specified below to be the Land Acquisition Officers for the purpose of Section 4 and Section 5A(2) of the Act within their respective jurisdiction:

(A) Sub Divisional Officers

(B) Deputy Collectors

(C) Assistant Directors of Town Planning

(D) Town Planners

(E) Tahsildars.

7. This notification was issued by order and in the name of the Governor of Maharashtra and it was gazetted. Once the officers by designation were appointed as Land Acquisition or Special Land Acquisition Officers under Section 3(eee) of the Land Acquisition Act, it was not necessary for the Government to gazette the subsequent orders naming individual officers holding such posts as Special Land Acquisition Officers. It was sufficient to issue the orders or transfer orders of the officers concerned so long as they were holding any of the five posts set out in the G.R. dated 9/11/1972 and it is not the case of the petitioners that either Mr.Kaple or Mr.Kale did not hold any of these five posts when they were transferred or appointed as Special Land Acquisition Officers.

8. Mr.Ketkar, the learned counsel appearing for

the respondent - Corporation, by referring to the earlier decision of this Court in Writ Petition No.5604 of 2002, submitted that the petitioners' title to the subject land was itself disputed. As per him the subject land was given to the petitioners on lease and they were not the owners. In any case we do not wish to go into these issues as the subject land is already in possession of the Municipal Corporation.

9. We, therefore, hold that the Special Land Acquisition Officer who issued the notification under Section 4(1) and conducted an enquiry under Section 5A of the Land Acquisition Act was duly appointed under Section 3(eee) of the said Act and the acquisition proceedings cannot be termed as vitiated on the grounds raised by the petitioners. Hence this petition also fails and the same is hereby rejected summarily.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)